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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/403,072	01/19/2000	RONNY KNEPPLE	3143-P0082A	6808

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EXAMINER
LEE, DIANE I

ART UNIT	PAPER NUMBER
2876	

DATE MAILED: 04/17/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	09/403,072	KNEPPLE ET AL.	
	Examiner	Art Unit	
	D. I. Lee	2876	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *03 December 2002* .

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *2,5-11,13 and 14* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *2,5-11,13 and 14* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☒ The specification is objected to by the Examiner.

10)☒ The drawing(s) filed on *22 April 2002* is/are: a)☐ accepted or b)☒ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

11)☐ The proposed drawing correction filed on *22 April 2002* is: a)☒ approved b)☐ disapproved by the Examiner.

If approved, corrected drawings are required in reply to this Office action.

12)☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

13)☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☒ All b)☐ Some * c)☐ None of:

1.☒ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____ .

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

14)☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).

a) ☐ The translation of the foreign language provisional application has been received.

15)☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

1) ☐ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ .
4) ☐ Interview Summary (PTO-413) Paper No(s). _____ .
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: .

DETAILED ACTION

1. Receipt is acknowledged of the Amendment filed 03 December 2002. Claim 12 has been canceled; claims 2 and 10 have been amended; and claim 14 has been newly added. Currently, claims 2, 5-11, and 13-14 are pending in this application.

2. The request filed on 03 December 2002 for a Continued Prosecution Application (CPA) under 37 CFR 1.53(d) based on prior Application No. 09/403,072 is acceptable and a CPA has been established. An action on the CPA follows.

Drawings

Figure 1 should be designated by a legend such as --Prior Art-- because only that which is old is illustrated (i.e., the applicant admitted in the specification page 6, line 15 that Fig. 1 is known identification method for sample container). See MPEP § 608.02(g). A proposed drawing correction or corrected drawings are required in reply to the Office action to avoid abandonment of the application. The objection to the drawings will not be held in abeyance.

Specification

3. The disclosure is objected to because of the following informalities:

(a) Page 3, lines 17: --Fig. 3 is an example of identification applied according to the invention-- should be inserted prior to "Detailed Description of the Drawings". Applicant added an additional figure (i.e., Figure 3) in the application (see the applicant's response filed 4/22/02). Therefore, Fig. 3 should be also listed in the Brief Description of the Drawings section. Appropriate correction is required.

Claim Objections

4. Claim 13 is objected to because of the following informalities:

(a) Re claim 13: Claim 13 is depending from claim 12, which is a canceled claim.

Appropriate correction is required.

Claim Rejections - 35 USC § 102

5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless –
>
> (b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

6. Claim 10 and its depend claims 5-6, 9, 11, and 13 are rejected under 35 U.S.C. 102(b) as being anticipated by Ono [JP 05-000,821 A].

Re claims 5, 10-11, and 13: Ono discloses a method for labeling sample containers (bottle 1), comprising the steps of:

providing a container for holding a sample to be analyzed and wherein the analysis includes a container and/or sample identification by an analysis device (i.e., reading device 11 for an identification and classification). Therefore, the sample container operating temperature (e.g., an identification operation) would be a surrounding temperature, such as a room temperature or an ambient temperature; and

applying container identification (bar code 6) to the container at the elevated temperature above a sample analysis temperature than the ambient temperature (i.e., in the manufacturing process of the sample container, the bottle material is blown to form a bottle 1. The bottle is blown during the "hot end" of the bottle manufacturing process and wherein the temperature range of the hot end would be at a maximum). During the final cooling phase of the ready sample container, heater 2, 3 is utilized to form

an identification such as a bar code 6 on the container, which clearly teaches that the temperature of the container when applying the bar code to the container is at the elevated temperature above the sample analysis temperature (i.e., applying the bar code at least higher than the ambient temperature). Since a maximum temperature would be provided at the hot end of the bottle manufacturing process, the identification is clearly applied in a temperature interval between a maximum temperature and a temperature that is above the operating or the ambient temperature (see the abstract). Therefore, Ono clearly teaches the process of elevating a temperature of the container above a sample analysis temperature and applying a bar code to the container at the elevated temperature that is above the room temperature.

Re claims 6 and 9: wherein the identification is applied in the form of a symbol such as a bar code applied annually onto a cylindrical portion of the sample container such that the bar code 6 is readable along the cylindrical axis (see the abstract and figures 3-6).

Claim Rejections - 35 USC § 103

7. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

8. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner

to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

9. Claims 2, 7-8, and 14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ono. The teachings of Ono have been discussed above.

Re claim 2: Although Ono teaches the temperature of the heater is adjusted by a temperature controller 5, Ono is silent with respect to specifically controlling the temperature interval, i.e., between 300°C and 600°C.

However, it would have been an obvious variation to an artisan of ordinary skill in the art at the time the invention was made to vary the temperature in order to provide specific desire strength of the container. Varying temperature of the bottle material would alter the strength characteristic and the formation of the bottle. Accordingly, it would have been an obvious extension taught by Ono.

Re claim 7: Ono does not disclose the identification is applied along with numerals and/or letters.

It would have been obvious to an artisan of ordinary skill in the art at the time the invention was made to incorporate the numerals and/or letters in the optical identification process of Ono to expand the identification labeling technique. Furthermore, applying the identification with numerals and/or letters in an optical reading process (incorporating optical character reading in the bar code reading) would have been an obvious extension taught by Ono for the purpose of providing additional information. Accordingly, it would have been an obvious expedient.

Re claim 8: Ono does not disclose the identification is applied in form of numerals and/or letters.

It would have been obvious to an artisan of ordinary skill in the art at the time the invention was made to substitute the bar code reading process of Ono with an optical reading process by providing the identification code in form of numerals and/or letters in order to eliminate the computing process in the decoder. Accordingly, it would have been an obvious expedient.

Re claim 14: Although Ono teaches the elevated temperature is greater than ambient temperature, he does not specify that it is above a degassing temperature.

Since, the temperature of the heater 2, 3, which utilized to form an identification on the container, is suitably adjusted with a regulator, it is would have been obvious to an artisan of ordinary skill in the art the time the invention was made to employ the temperature above the degassing temperature in order to prevent any gas evacuated from the container and to prevent any gas exposed in the operating room during annealing process. Such modification would create safe and gas-fee operating environment.

Response to Arguments

10. Applicant's arguments filed 03 December 2002 have been fully considered but they are not persuasive.

11. In response to applicant's argument that the references fail to show certain features of applicant's invention, it is noted that the features upon which applicant relies (i.e., de-gassing temperature to which the container s heated such that the marking agents doe not contaminated the sample in the sample container during the analysis) are not recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).

12. In response to applicant's argument with respect to Ono on page 5, lines 1+ that Ono does not disclose, teach, or suggest elevating a container temperature above a sample analysis temperature nor, at the elevated temperature, applying container identification to the container, and further stated that Ono never mention any temperature for any sample analysis and, therefore, does not disclose elevating a container temperature above, and relative to, the sample analysis temperature. The examiner respectfully disagrees. Ono teaches the process of elevating a container temperature above a sample analysis temperature. In the manufacturing process of the sample container, the bottle is blown during the "hot

end" of the bottle manufacturing process to form a bottle 1. The temperature range of the hot end would be at a maximum temperature. During the final cooling phase of the ready sample container, heater is utilized to form an identification such as a bar code 6 on the container which clearly teaches that the temperature of the container is at the elevated temperature above the temperature of the sample analysis temperature or the ambient temperature (i.e., surrounding temperature). Therefore, the bar code is clearly applied in a temperature above the operating or identification temperature (i.e., an ambient temperature). Furthermore, Ono clearly teaches the temperature (i.e., the temperature interval between a maximum and an operating temperature) for sample analysis wherein the analysis includes an identification process. Therefore, Ono clearly teaches the process of elevating a container temperature above the sample analysis temperature.

13. Applicant argued that Ono does not teach the limitation of elevating a container temperature above a de-gassing temperature, and further stated that Ono never mentions any de-gassing temperature or its relation with the sample analysis temperature. Although Ono teaches that the elevated temperature is greater than ambient temperature (i.e., elevating the container temperature and its relation with the sample analysis temperature), the examiner recognized that Ono does not specify that it is above a degassing temperature. However, release of any gas in a manufacturing environment is not a desirable environment, and the fact that the temperature of the heater 2, 3 of Ono for forming an identification on the container is suitably adjusted with a regulator, it is would have been obvious to an artisan of ordinary skill in the art the time the invention was made to employ the temperature above the degassing temperature in order to prevent any gas evacuated from the container and to prevent any gas exposed in the operating room during annealing process. Such modification would create a safe and a gas-fee operating environment.

14. With respect to attached figure A and B, the Ono meets the claimed invention (see the discussion above).

15. In response to applicant's argument with respect to figure C, it appears that figure C is missing from the Response filed 12/03/02. However, from the context of the argument in reference to Ono, applicant stated that the bar coding is applied as the glass is cooled, whether or not the temperature is above or below the sample analysis temperature and further stated that Ono does not specify the temperature interval in which the bar code is applied; the examiner respectfully disagrees. Although Ono does not explicitly specify the temperature interval in which the bar code is applied, one of ordinary skill in the art would have recognized that annealing processing carried out between the hot end (i.e., maximum temperature of the container when the bottle is blown) and the cooling phase toward the ambient temperature. Due to the fact that applicant has not clearly defined the analysis type, the examiner has given a broadest interpretation of the claim and defined the temperature of the sample analysis as a room or ambient temperature, since a sample analysis temperature for a visual analysis or an identification analysis, for example, would be a room temperature. Therefore, without clearly defining the analysis type, Ono teaches the claimed limitation, i.e., Ono teaches the process of elevating a container temperature above a sample analysis temperature during the identification process in a temperature interval between the maximum and the ambient temperature.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to D. I. Lee whose telephone number is 703-306-3427. The examiner can normally be reached on Monday through Thursday from 5:30 AM to 4:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael G. Lee can be reached on 703-305-3503. The fax phone numbers for the organization where this application or proceeding is assigned are 703-308-7722 for regular communications and 703-308-7722 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0956.

D. I. Lee
Primary Examiner
Art Unit 2876

July 8, 2002